

COMPLIANCE BOARD OPINION 00-9

October 10, 2000

Dr. Callum Bain
The Talbot River Protection Association

The Open Meetings Compliance Board has considered your complaint that the “Technical Advisory Committee,” a group involved in the land use planning process in Talbot County, violated the Open Meetings Act by routinely holding closed meetings and by failing to keep minutes. For the reasons stated below, the Compliance Board finds that the Act was not violated.

I

Analysis

Every requirement in the Open Meetings Act is framed in terms of the meeting practices of a “public body.” If an entity is not a public body, it is not subject to the Act. In §10-502 (h) of the State Government Article, the Act defines “public body” as an entity that consists of at least two individuals and that is created in either of two ways: under the authority of a formal legal enactment by the State or a local government, including a county ordinance; or, less formally, by appointment of the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least two non-governmental members.

The “Technical Advisory Committee” is evidently not a “public body.” In a timely response to the complaint submitted by Michael L. Pullen, Esquire, Talbot County Attorney, Mr. Pullen explained that “the ‘Technical Advisory Committee’ is the name used to describe an interdepartmental and intergovernmental meeting between the representatives of different local and state agencies to discuss proposed applications for site plan review and to coordinate technical requirements.”

No legal enactment, State or local, authorizes such a committee. Instead, the “committee” performs a function identified in §19.12(a)(3) of the Talbot County Zoning Ordinance, which provides for a “pre-application conference” prior to an application for site plan approval. This provision identifies the participants in a pre-application conference as the applicant, planning officer, “a member or members of the Planning Commission and representatives of any public agency that may have an interest in or be affected by the proposed development. The purpose of the

conference shall be to discuss informally the nature of the proposed development, its relationship to surrounding development, site conditions that may require special consideration or treatment and the information that will be required to be submitted with the application.”

This provision neither creates nor authorizes a distinct public body with a designated membership. Rather, each “committee” meeting is an ad hoc assemblage of the applicant, the planning officer, and those state and local officials who have an interest in discussing the particular proposal. Moreover, according to Mr. Pullen, a quorum of the Planning Commission has never attended a pre-application conference. Therefore, the meetings of the “committee” cannot be considered meetings of the Planning Commission in another guise.

II

Conclusion

The Compliance Board concludes that the meetings in question were not those of a public body. Therefore, the Open Meetings Act did not apply to the meetings and did not require that they be held in open session or that minutes be maintained.

The Compliance Board notes with approval, however, that Mr. Pullen’s letter concludes with a statement that the Talbot County Council has decided to direct that future pre-application conferences be open to the public:

The Council recognizes that public trust in government is important. The absence of any compelling reason to exclude the public from these meetings, (nothing occurs which cannot be discussed publicly) together with the positive benefit to be achieved by dispelling any false notion that decisions are being made in secret, when in fact, decisions on the merits are not made and never have been, much less in secret, are each sufficient to persuade the Council to open future pre-application conferences to the public. Attendance by the public would be subject to the same restrictions as are applicable to meetings which are required to be open to the public under the Act, that is, while attendance is open, participation is not.

The Compliance Board commends the Talbot County Council for this policy decision in favor of increased openness in government.

OPEN MEETINGS COMPLIANCE BOARD

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